

Add Sections 7657.5 (Motor Vehicle Fuel Tax Law), 8880 (Use Fuel Tax Law), 11408.5 (Private Railroad Car Tax), 30285 (Cigarette and Tobacco Products Tax Law), 32258 (Alcoholic Beverage Tax Law), 38454.5 (Timber Yield Tax), 40105 (Energy Resources Surcharge Law), 41099 (Emergency Telephone Users Surcharge Law), 43159.1 and 43159.2 (Hazardous Substances Tax Law), 45158 (Integrated Waste Management Fee Law), 46159 (Oil Spill Response, Prevention, and Administration Fees Law), 50112.6 (Underground Storage Tank Maintenance Fee Law), 55045.1 and 55045.2 (Fee Collection Procedures Law), and 60210.5 (Diesel Fuel Tax Law) to the Revenue and Taxation Code to authorize the Board to provide relief of liability for an innocent spouse, if, in light of all the facts and circumstances, it is inequitable to hold that spouse liable for any unpaid tax, fee, or any deficiency (or any portion of either).

Source: Honorable Betty T. Yee

Existing Law

Revenue and Taxation Code Section 6456 provides equitable relief under certain circumstances to a spouse or registered domestic partner (hereinafter also referred to as "spouse") where a business that is owned by a husband and wife co-ownership or registered domestic partnership incurs a sales or use tax liability. Under subdivisions (a) through (e) of Section 6456 and subdivisions (a) through (e) of Regulation 1705.1, a spouse may request equitable relief if:

- A. A liability is incurred under the Sales and Use Tax Law;
- B. The claiming spouse is no longer married to or is legally separated from the nonclaiming spouse, or the claiming spouse is no longer a member of the same household as the nonclaiming spouse;
- C. The claiming spouse timely files a written request for relief.

The Board of Equalization (Board) will evaluate the request and may grant a spouse equitable relief (which is also known as "innocent spouse" relief) from tax, interest, penalties, and other amounts if:

- 1. The liability is attributable to the nonclaiming spouse;
- 2. The spouse claiming relief establishes that he or she did not know of, and that a reasonably prudent person in the claiming spouse's circumstances would not have had reason to know of, the liability;
- 3. It would be inequitable to hold the claiming spouse liable for the liability, taking into account whether the claiming spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

If a claiming spouse does not meet the three criteria above for "innocent spouse" relief, subdivision (f) of Section 6456 and subdivision (h) of Regulation 1705.1 provide additional criteria by which the claiming spouse may qualify for equitable relief. However, the spouse must still meet the threshold criteria A through C above.

Additional criteria that may be considered in determining if it would be inequitable to continue to hold the claiming spouse liable for paying the tax liability, include, but are not limited to: the claiming spouse's financial condition; whether a divorce decree assigns responsibility to the other spouse; and whether duress or abuse was involved. A spouse whose claim for equitable relief is denied may request that the claim be reconsidered by the Board Members.

Background

Section 6456, enacted effective January 1, 1994, and Regulation 1705.1, adopted effective December 5, 1997, and retroactive to January 1, 1994, authorize the Board to grant innocent spouse relief in Sales and Use Tax cases. Additional criteria by which equitable relief may be granted were added to the statute effective January 1, 2001 (Stats. 2000, Ch. 1052) and to the regulation effective October 20, 2001. The Board has also reviewed innocent spouse claims in income tax appeals from the Franchise Tax Board.

Currently, there are no statutory or regulatory provisions for innocent spouse relief in any of the special tax and fee programs administered by the Board. This proposal addresses those situations where a spouse seeks relief from tax liabilities associated with a jointly owned business but may only be granted relief from sales and use tax liabilities. It is increasingly the case that a business that must be licensed with the Board for sales and use taxes is also required to register with the Board for other tax and fee programs. For example, a wine grower that operates a tasting room and sells wine and other taxable products must register with the Board for collection of the sales and use taxes and for payment of alcoholic beverage taxes. Similarly, the owners of a gas station may be responsible for remitting both sales and use taxes and underground storage tank fees to the Board. The incidence of sales tax account-holders incurring additional Board-administered tax or fee responsibilities has increased due to the increase in the types of fees and taxes that are collected by the Board and to changes that have occurred in certain industries. Innocent spouses who own such businesses should be permitted to obtain equitable relief from special tax and fee liabilities, given the same circumstances as those under which they are permitted to obtain equitable relief from sales and use tax liabilities.

This Proposal

This proposal would authorize the Board to grant relief from liability to an innocent spouse under all tax and fee programs administered by the Board. The same standards and procedures that apply under the current Sales and Use Tax Law would apply to these programs. If, in light of all the facts and circumstances, it would be inequitable to hold the innocent spouse liable for any unpaid tax, fee, or deficiency (or any portion thereof), the Board may grant relief.

Should this proposal be adopted and a bill passed, staff would draft an omnibus regulation, based on Sales and Use Tax Regulation 1705.1, that could be added to Chapter 9.9 of Division 2 of title 18 of the California Code of Regulations. This regulation would apply to all special tax and fee laws to which the innocent spouse and registered domestic partner relief provision is being added, including the Private Railroad Car Tax Law and the Timber Yield Tax Law.

Section 7657.5 of the Motor Vehicle Fuel Tax Law is added to read:

7657.5 (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months subject to the provisions of this part, but shall not apply to any calendar month that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as a supplier entering, removing or selling taxable motor vehicle fuel or an aircraft jet fuel dealer selling or using taxable aircraft jet fuel to which the understatement is attributable. If neither spouse rendered substantial services as a supplier or aircraft jet fuel dealer, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Family Code Section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as are granted and imposed in this section with respect to spouses, pursuant to Family Code Section 297.5.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

Section 8880 of the Use Fuel Tax Law is added to read:

8880 (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as a user using taxable fuel or a vendor selling taxable fuel to which the understatement is

attributable. If neither spouse rendered substantial services as a user or a vendor, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Family Code Section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as are granted and imposed in this section with respect to spouses, pursuant to Family Code Section 297.5.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

Section 11408.5 of the Private Railroad Car Tax Law is added to read:

11408.5 (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to pay a tax levied and required to be paid under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed, and the understatement of tax liability is attributable to one spouse; or any amount of the tax was unpaid and the nonpayment of the tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of the tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar years subject to the provisions of this part, but shall not apply to any calendar year that is more than five years from the final date on the board-issued determination, five years from the due date for nonpayment on a levy, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to pay a levy or an omission of an item from the payment, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as a person that owns a private railroad car operated upon the railroads in this state to which the understatement is attributable. If neither spouse rendered substantial services as such a person, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Family Code Section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as are granted and imposed in this section with respect to spouses, pursuant to Family Code Section 297.5.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

Section 30285 of the Cigarette and Tobacco Products Tax Law is added to read:

30285 (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return and/or report required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return and/or report, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return and/or report was unpaid and the nonpayment of the reported tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months subject to the provisions of this part, but shall not apply to any calendar month that is more than five years from the final date on the board-issued determination, five years from the return and/or report due date for nonpayment on a return and/or report, or one year

from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return and/or report or an omission of an item from the return and/or report, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as a distributor of cigarettes or tobacco products or who sells or accepts orders for cigarettes or tobacco products to be transported from outside this state to a consumer in this state to which the understatement is attributable. If neither spouse rendered substantial services as a distributor, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return and/or report.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Family Code Section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as are granted and imposed in this section with respect to spouses, pursuant to Family Code Section 297.5.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

Section 32258 of the Alcoholic Beverage Tax Law is added to read:

32258 (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months, quarters, or years subject to the provisions of this part, but shall not apply to any calendar month, quarter, or year that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as a manufacturer, wine grower, importer, or seller of beer or wine, or as manufacturer, distilled spirits manufacturer's agent, brandy manufacturer, rectifier, wholesaler, or seller of distilled spirits to which the understatement is attributable. If neither spouse rendered substantial services as a manufacturer, wine grower, importer, or seller of beer or wine, or as manufacturer, distilled spirits manufacturer's agent, brandy manufacturer, rectifier, wholesaler, or seller of distilled spirits, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Family Code Section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as are granted and imposed in this section with respect to spouses, pursuant to Family Code Section 297.5.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

Section 38454.5 of the Timber Yield Tax Law is added to read:

38454.5 (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as a timber owner who harvests his or her timber or causes it to be harvested, is first to acquire title to felled or downed timber from an exempt person or agency, or without authorization, harvests or causes to be harvested timber owned by another to which the understatement or nonpayment is attributable. If neither spouse rendered substantial services as a timber owner, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Family Code Section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as are granted and imposed in this section with respect to spouses, pursuant to Family Code Section 297.5.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

Section 40105 of the Energy Resources Surcharge Law is added to read:

40105 (a) Under regulations prescribed by the board, if:

(1) A surcharge liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of surcharge liability is attributable to one spouse; or any amount of the surcharge reported on a return was unpaid and the nonpayment of the reported surcharge liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in surcharge attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the surcharge (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of the surcharge.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as an electric utility making sales of electrical energy or as a consumer of electrical energy to which the understatement is attributable. If neither spouse rendered substantial services as an electric utility or a consumer, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid surcharge or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Family Code Section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as are granted

and imposed in this section with respect to spouses, pursuant to Family Code Section 297.5.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

Section 41099 of the Emergency Telephone Users Surcharge Law is added to read:

41099 (a) Under regulations prescribed by the board, if:

(1) A surcharge liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of surcharge liability is attributable to one spouse; or any amount of the surcharge reported on a return was unpaid and the nonpayment of the reported surcharge liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in surcharge attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the surcharge (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of the surcharge.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months, quarters, and years subject to the provisions of this part, but shall not apply to any calendar month, quarter, or year that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as a service supplier supplying intrastate telephone communication services to service users or as a user of intrastate telephone communication services to which the understatement is attributable. If neither spouse rendered substantial services as a service supplier or a service user, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any

unpaid surcharge or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Family Code Section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as are granted and imposed in this section with respect to spouses, pursuant to Family Code Section 297.5.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

Section 43159.1 of the Hazardous Substances Tax Law is added to read:

43159.1 (a) Under regulations prescribed by the board, except for a fee imposed pursuant to Section 105310 of the Health and Safety Code, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of the tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in the tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of the tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months or years subject to the provisions of this part, but shall not apply to any calendar month or year that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as a taxpayer with respect to the taxes administered under this part to which the understatement is attributable. If neither spouse rendered substantial services as a taxpayer, then

the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Family Code Section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as are granted and imposed in this section with respect to spouses, pursuant to Family Code Section 297.5.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

Section 43159.2 of the Hazardous Substances Tax Law is added to read:

43159.1 (a) Under regulations prescribed by the board, with respect to a fee imposed pursuant to Section 105310 of the Health and Safety Code, if:

(1) A fee liability under this part was understated by a failure to pay a fee assessed and required to be paid under this part or by erroneous deductions or credits claimed, and the understatement of the fee liability is attributable to one spouse; or any amount of the fee due on a billing was unpaid and the nonpayment of the fee liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in the fee attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the fee (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of the fee.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar years subject to the provisions of this part, but shall not apply to any calendar year that is more than five years from the final date on the board-issued determination, five years from the due date for payment on a billing, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to pay a billing or an omission of an item, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as a feepayer with respect to fee imposed under Section 105310 of the Health and Safety Code to which the understatement is attributable. If neither spouse rendered substantial services as a feepayer, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be taken.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid fee or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Family Code Section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as are granted and imposed in this section with respect to spouses, pursuant to Family Code Section 297.5.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

Section 45158 of the Integrated Waste Management Fee Law is added to read:

45158 (a) Under regulations prescribed by the board, if:

(1) A fee liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of fee liability is attributable to one spouse; or any amount of the fee reported on a return was unpaid and the nonpayment of the reported fee liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in fee attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the fee (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of the fee.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the

spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as an operator of a facility for disposal of solid waste to which the understatement is attributable. If neither spouse rendered substantial services as an operator, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid fee or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Family Code Section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as are granted and imposed in this section with respect to spouses, pursuant to Family Code Section 297.5.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

Section 46159 of the Oil Spill Response, Prevention, and Administration Fees Law is added to read:

46159 (a) Under regulations prescribed by the board, if:

(1) A fee liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of the fee liability is attributable to one spouse; or any amount of the fee reported on a return was unpaid and the nonpayment of the reported fee liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in the fee attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the fee (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of the fee.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months subject to the provisions of this part, but shall not apply to any calendar month that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as an operator of a marine terminal, a pipeline, or a refinery engaged in activities subject to fees under this part to which the understatement is attributable. If neither spouse rendered substantial services as an operator, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid fee or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Family Code Section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as are granted and imposed in this section with respect to spouses, pursuant to Family Code Section 297.5.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

Section 50112.6 of the Underground Storage Tank Maintenance Fee Law is added to read:

50112.6 (a) Under regulations prescribed by the board, if:

(1) A fee liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of the fee liability is attributable to one spouse; or any amount of the fee reported on a return was unpaid and the nonpayment of the reported fee liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in the fee attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the fee (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of the fee.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar quarters subject to the provisions of this part, but shall not apply to any calendar quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as an owner of an underground storage tank containing petroleum that is subject to fees imposed by this part to which the understatement is attributable. If neither spouse rendered substantial services as an owner, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid fee or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Family Code Section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as are granted and imposed in this section with respect to spouses, pursuant to Family Code Section 297.5.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

Section 55045.1 of the Fee Collection Procedures Law is added to read:

55045.1 (a) Under regulations prescribed by the board, except for a fee imposed pursuant to Section 1525 of the Water Code, if:

(1) A tax or fee liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly

includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of the tax or fee liability is attributable to one spouse; or any amount of the tax or fee reported on a return was unpaid and the nonpayment of the reported tax or fee liability is attributable to one spouse.

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in the tax or fee attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the tax or fee (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of the tax or fee.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months, quarters, or years subject to the provisions of this part, but shall not apply to any calendar month, quarter, or year that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as a taxpayer or feepayer engaged in an activity or transaction that is subject to a tax or fee administered under this part to which the understatement is attributable. If neither spouse rendered substantial services as a taxpayer or feepayer, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or fee or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Family Code Section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as are granted and imposed in this section with respect to spouses, pursuant to Family Code Section 297.5.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

Section 55045.2 of the Fee Collection Procedures Law is added to read:

55045.2 (a) Under regulations prescribed by the board, with respect to a fee imposed pursuant to Section 1525 of the Water Code, if:

(1) A fee liability under this part was understated by a failure to pay a fee assessed and required to be paid under this part or by erroneous deductions or credits claimed, and the understatement of the fee liability is attributable to one spouse; or any amount of the fee due on a billing was unpaid and the nonpayment of the fee liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in the fee attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for the fee (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of the fee.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar years subject to the provisions of this part, but shall not apply to any calendar year that is more than five years from the final date on the board-issued determination, five years from the due date for payment on a billing, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to pay a billing or an omission of an item, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as a person holding a permit or license to appropriate water or a lessor of water who is subject to the fee imposed under Section 1525 of the Water Code to which the understatement is attributable. If neither spouse rendered substantial services as a person holding a permit or a lessor, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be taken.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid fee or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Family Code Section 297, have the same rights, protections, and benefits, and

are subject to the same responsibilities, obligations, and duties as are granted and imposed in this section with respect to spouses, pursuant to Family Code Section 297.5.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.

Section 60210.5 of the Diesel Fuel Tax Law is added to read:

60210.5 (a) Under regulations prescribed by the board, if:

(1) A tax liability under this part was understated by a failure to file a return required to be filed under this part, by the omission of an amount properly includable therein, or by erroneous deductions or credits claimed on a return, and the understatement of tax liability is attributable to one spouse; or any amount of the tax reported on a return was unpaid and the nonpayment of the reported tax liability is attributable to one spouse,

(2) The other spouse establishes that he or she did not know of, and had no reason to know of, that understatement or nonpayment, and

(3) Taking into account whether or not the other spouse significantly benefited directly or indirectly from the understatement or the nonpayment and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax attributable to that understatement or nonpayment, then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) to the extent that the liability is attributable to that understatement or nonpayment of tax.

(b) For purposes of this section, the determination of the spouse to whom items of understatement or nonpayment are attributable shall be made without regard to community property laws.

(c) This section shall apply to all calendar months or quarters subject to the provisions of this part, but shall not apply to any calendar month or quarter that is more than five years from the final date on the board-issued determination, five years from the return due date for nonpayment on a return, or one year from the first contact with the spouse making a claim under this section; or that has been closed by res judicata, whichever is later.

(d) For purposes of paragraph (2) of subdivision (a), "reason to know" means whether or not a reasonably prudent person would have had reason to know of the understatement or nonpayment.

(e) For purposes of this section, with respect to a failure to file a return or an omission of an item from the return, "attributable to one spouse" may be determined by whether a spouse rendered substantial service as a supplier entering, removing or selling taxable diesel fuel, an interstate user, an exempt bus operator, or a qualified highway vehicle operator using taxable diesel fuel to which the understatement is attributable. If neither spouse rendered substantial services as a supplier, interstate user, exempt bus operator, or qualified highway vehicle operator, then the attribution of applicable items of understatement shall be treated as community property. An erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(f) Under procedures prescribed by the board, if, taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under subdivision (a), the board may relieve the other spouse of that liability.

(g) For purposes of this section, registered domestic partners, as defined in Family Code Section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as are granted and imposed in this section with respect to spouses, pursuant to Family Code Section 297.5.

(h) The relief provided by this section shall apply retroactively to liabilities arising prior to the effective date of this section.